ATTACHMENT # 9
OFFER TO NEGOTIATE EXCLUSIVELY

Office of Community Investment and Infrastructure
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Attention: Tiffany Bohee
Executive Director

Ladies and Gentlemen:

**Exclusive Right to Negotiate**

Parcel [ ], Assessor's Block [ ], Lot [ ]

[Name of Project Area]

The undersigned developer ("Developer") hereby submits to the Office of Community Investment and Infrastructure ("OCII"), an Offer to Negotiate Exclusively ("Offer") for up to 90 days for the right to lease and develop the subject property, Parcel [ ] (the “Site”), located at [describe location], according to the development opportunity set forth in OCII’s Request for Proposals dated [   ], hereinafter called the "RFP". This Offer may be extended for up to three (3) additional 90-day periods at the sole discretion of the Executive Director of OCII.

The 90-day Offer period shall begin on the date of the OCII Commission’s approval of such Exclusive Negotiations, as memorialized by an OCII Resolution. During the Exclusive Negotiations period, OCII and Developer shall seek to complete a long-term [________], which shall set forth the terms of the Developer’s program and development for the Site.

The Developer hereby delivers its Offer to Negotiate Payment (the "Payment") in the form of a certified check or cashier’s check, unless otherwise waived by OCII, made payable to the Office of Community Investment and Infrastructure in the amount of [________] [($________)].

This Offer to Negotiate Exclusively is made upon the following terms and conditions:

1. The Developer understands and agrees that:

   (a) The Payment of [________] [($________)] shall become non-refundable in the event that the Commission approves the Developer for Exclusive Negotiations for development of the Site. The Payment shall be refunded to the Developer if it is not selected to enter Exclusive Negotiations.
(b) The Offer to Negotiate Payment requirement may, at OCII’s sole discretion, be waived for California-based nonprofit corporations with 501(c)(3) federal tax-exempt status.

2. The Developer agrees (1) that OCII shall have no liability whatsoever of any kind or character; and (2) that the Developer has no, and shall not obtain, any claim or claims against OCII or OCII Property (all as hereafter defined), directly or indirectly, by reason of all or any of the following:

(a) Any aspect of the RFP, including any information or material set forth herein or referred to therein.

(b) Any modification or suspension of the RFP or any modification of the scope of the project described in the RFP, or informalities or defects therein.

(c) Any modification of or informality or defect in the selection procedure or any act or omission of OCII with respect thereto, including, but not limited to, OCII due diligence regarding any developer, including contacts and consultations with any developer as to any matter.

(d) The rejection of any Offer to Negotiate Exclusively, including this Offer to Negotiate Exclusively.

(e) The acceptance by OCII of any Offer to Negotiate Exclusively, including this Offer to Negotiate Exclusively.

(f) Entering into and thereafter engaging in Exclusive Negotiations.

(g) The termination of Exclusive Negotiations.

(h) Entering into any Ground Lease, Loan Agreement, Development and Disposition Agreement, or any other agreement relating to the RFP or as a result thereof.

(i) Any statements, representations, acts or omissions of OCII in connection with all or any of the foregoing.

(j) The exercise of any OCII discretion set forth in or with respect to any of the foregoing.

(k) If the Developer is selected for Exclusive Negotiations but the Developer is not approved by OCII for any reason, OCII shall retain the Payment as liquidated damages. The Developer agrees that [________] [($________)] is a reasonable sum, considering all the circumstances existing at the date of this agreement, including the relationship of the sum to the range of harm to OCII that reasonably
could be anticipated, and the anticipation that establishing proof of actual damages would be costly, difficult, and inconvenient. In placing their initials below, each party specifically confirms the accuracy of the statement made above and the fact that each party was represented by counsel who explained the consequences of this liquidated damages provision at the time this agreement was made.

OCII Initials__________  Developer Initials__________

(l) Any and all other matters arising out of or directly or indirectly connected with all or any of the foregoing.

The undersigned further, by its execution of this Offer to Negotiate Exclusively, expressly and absolutely waives any and all claims against OCII and OCII Property, directly or indirectly arising out of or in any way connected with all or any of the foregoing.

For purposes of this Section 3, the word “OCII” includes its members, officers, employees, agents, successors, and assigns; and the words "OCII Property" include property which is the subject of the RFP and all other property of OCII, real, personal or of any other kind or character. The words "claim or claims" include any and all protests, rights, remedies, interests, objections, claims, demands, actions, or causes of action of every kind or character whatsoever, in law or equity, for money or otherwise, including but not limited to claims for loss, expense or damage, claims to property, real or personal, or rights or interests therein, and claims to contract or development rights or development interests of any kind or character in any OCII property. The words "Developer" or "developers" includes any person, entity or group responding to OCII’s RFP through an executed Offer to Negotiate Exclusively.

3. The Developer understands that the nature and type of development is subject to the approval of OCII. The Developer further understands that it will be required to make full disclosure to OCII of its principal officers, stockholders, members, and all other pertinent information concerning the Developer and its associates.

4. The Developer understands that its selection of an architect and any other principal association of the undersigned Developer for the purpose of developing the Site is subject to the approval of OCII.

5. If OCII accepts its Offer to Negotiate Exclusively, the Developer understands that there shall be no change in its composition or any interest therein by transfer, assignment or otherwise, nor any interest therein or any part thereof, to any person or entity without the prior written consent of OCII after approval by the OCII Commission.

6. The Developer understands that if it is not selected to enter Exclusive Negotiations in the event of the rejection of the undersigned and/or the selection of another developer, the [_______] [($_______)] Offer to Negotiate Payment shall be returned to the undersigned Developer, without interest.
7. The Developer understands that the OCII Commission must approve and authorize acceptance of this Offer and any extension of the up to 90-day negotiations period.

8. The Developer understands that during the period of Exclusive Negotiations it will negotiate in good faith any and all agreements between itself and OCII that the OCII requires.

9. The Developer understands that negotiations may be extended beyond the up to 90-day period by agreement of OCII and itself to enable the undersigned Developer and OCII to negotiate any all agreements required by OCII.

10. The Developer understands that OCII will not solicit or consider any other Proposals or negotiate with any other developer during the period of Exclusive Negotiations.

11. The Developer understands that if negotiations culminate in agreements with OCII, such agreements becomes final only after and if the agreements have been considered and approved by the OCII Commission, and, as applicable, the San Francisco Board of Supervisors after public hearings, and the agreements are thereafter duly executed.

12. The Developer understands that it, as well as its consultants, contractors, subcontractors and tenants, will be required as part of any agreement approved under Paragraph 10 above to comply with OCII’s Equal Opportunity Program requirements throughout the development process, including the submission of an Equal Opportunity Program for OCII approval. The Developer understands that OCII’s Contract Compliance division is available to assist in formulating an Equal Opportunity Program.

13. The Developer understands that it, as well as its contractors and subcontractors, will be required as part of any agreement approved under Paragraph 12 above to comply with OCII’s Prevailing Wage Provisions (Labor Standards) throughout the development process. The Developer acknowledges that the Prevailing Wage Provisions are set forth as an attachment to the RFP and that OCII’s Contract Compliance Division is available to assist in the interpretation and implementation of such provisions.

14. The Developer acknowledges that it has read the RFP and the contents of the Developer’s Packet, and by this offer further acknowledges and accepts all of the matters set forth therein. The Developer understands that failure to include all required information required by the RFP may be grounds for rejecting this offer.
The parties hereby agree to the terms of this Offer to Negotiate Exclusively, as indicated by the signatures of their authorized representatives, below:

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE:

By __________________________

Executive Director

Date __________________________

DEVELOPER:

By: __________________________

Title:

By: __________________________

Title:

Date __________________________